

Nicoletti Hornig & Sweeney

WALL STREET PLAZA
88 PINE STREET
SEVENTH FLOOR
NEW YORK, NY 10005-1801
TELEPHONE 212-220-3830
FACSIMILE 212-220-3780
GENERAL@NICOLETTIHORNIG.COM
WWW.NICOLETTIHORNIG.COM

KEVIN J.B. O'MALLEY
PARTNER
DIRECT DIAL: 212-220-0394
KOMALLEY@NICOLETTIHORNIG.COM

August 15, 2023

VIA ECF

MEMORANDUM ENDORSED

Hon. Gregory H. Woods
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: August 15, 2023
--

Re: *Allianz-Suisse Versicherungs-Gesellschaft*
v. Kuehne + Nagel Inc.
Case No. 23 CV 03682 (GHW)
Our File: 0-1596

Dear Judge Woods:

We represent Plaintiff Allianz-Suisse Versicherungs-Gesellschaft and write pursuant to the Notice of Initial Pretrial Conference (Doc. 4). A proposed Case Management Plan and Scheduling Order is enclosed.

Because of on-going settlement discussions between the parties over the past several months, a Summons and the Complaint were not served on Defendant Kuehne + Nagel Inc. until August 10, 2023. The Notice of Initial Pretrial Conference and Your Honor's Individual Practices were sent to Defendant on August 8, 2023. A draft of this letter and the proposed Case Management Plan and Scheduling Order were provided to Defendant on August 14, 2023 with a request for comment.

Counsel for Defendant called us today to advise he had just been retained. We advised defense counsel of the initial pretrial conference scheduled for August 22, 2023. Defense counsel advised that Defendant intends to file a third-party complaint against MSC Mediterranean Shipping Company S.A.

The below and the proposed Case Management Plan and Scheduling Order are provided without the input of Defendant.

1. A brief statement of the nature of the case, the principal claims and defenses, and the major legal and factual issues that are most important to resolving the case, whether by trial, settlement or dispositive motion.

Plaintiff alleges:

This subrogation action concerns the theft of a shipment of running shoes during transit while the goods were in the care, custody or control of Defendant. The goods, loaded in a container, were tendered to Defendant in good order and condition for carriage by sea from Vietnam to the United States of America. Defendant failed to deliver the goods in the same good order and condition. To the contrary, the goods were stolen. Plaintiff insured the goods and paid for the loss. Defendant is a non-vessel-operating common carrier that issued a sea waybill for the carriage of the goods. The claim amount is \$110,392.40.

Plaintiff does not believe there are any major legal or factual issues to resolve the case beyond those typical of a cargo loss claim.

2. A brief statement by plaintiff as to the basis of subject matter jurisdiction and venue, and a brief statement by each party as to the presence or absence of subject matter jurisdiction and venue. Statements shall include citations to relevant statutes. In addition, in cases for which subject matter jurisdiction is founded on diversity of citizenship, the parties shall comply with the Court's Individual Rule 2(B)(ii).

The issues in this action concern a contract for the carriage of goods by sea to a port of the United States, in foreign trade, governed by the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. § 30701 *et seq.* (note), and thereby come within the federal question jurisdiction of this Court pursuant to 28 U.S.C. § 1331. Alternatively, the issues in this action concern an alleged breach of a maritime contract and damage to goods while being carried by sea, thereby coming within the admiralty or maritime jurisdiction of the Court pursuant to 28 U.S.C. § 1333. Venue lies in this Court because Defendant's sea waybill contains a choice of forum clause that calls for suit to be filed in this Court.

3. A brief description of any (i) motions that any party seeks or intends to file, including the principal legal and other grounds in support of and opposition to the motion, (ii) pending motions, and (iii) other applications that are expected to be made at the status conference.

There are no pending motions, and Plaintiff does not presently contemplate any motions in the short term. Plaintiff may move for summary judgment upon the close of discovery on the basis that it has met its *prima facie* case.

4. A brief description of any discovery that has already taken place, and any discovery that is likely to be admissible under the Federal Rules of Evidence and material to proof of claims and defenses raised in the pleadings. (This is narrower than the general scope of discovery stated in Rule 26(b)(1)).

No formal discovery has taken place. Plaintiff provided shipping documents and other claim supports to Defendant prior to filing suit, including documents supporting the claimed value of the lost goods.

Hon. Gregory H. Woods

- 3 -

August 15, 2023

5. A computation of each category of damages claimed, see Fed. R. Civ. P. 26(a)(1)(A)(iii).

Commercial invoice value of lost goods \$110,392.40

6. A statement describing the status of any settlement discussions and whether the parties would like a settlement conference.

Plaintiff and Defendant have been discussing settlement for several months. While the on-going discussions have been productive, no resolution has been reached as of yet.

7. Any other information the parties believe may assist the Court in resolving the action.

Plaintiff is not presently aware of any other information that may assist the Court in resolving the action.

Respectfully submitted,

NICOLETTI HORNIG & SWEENEY

By: /s/ Kevin J.B. O'Malley

Encl.

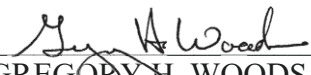
Cc: **VIA EMAIL**

Andrew R. Spector, Esq. (Andrew.Spector@spectorrubin.com)
SPECTOR RUBIN, P.A.
Attorneys for Defendant

In light of Plaintiff's statements that this letter and proposed case management plan do not reflect input from Defendant, and that Defendant intends to file a third-party complaint, the Court will sua sponte adjourn the initial pretrial conference. The initial pretrial conference scheduled for August 22, 2023, is adjourned to October 25, 2023, at 4:00 p.m. The joint status letter and proposed case management plan described in the Court's May 4, 2023 order, Dkt. No. 4, are due no later than October 18, 2023.

SO ORDERED.

Dated: August 15, 2023
New York, New York



GREGORY H. WOODS
United States District Judge